HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL Nos.31 AND 33 OF 2004

COMMON JUDGMENT:

Both these appeals are filed by the claimants, aggrieved of the common award, dated 26-09-2003, in M.O.P. Nos.430 and 458 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Vizianagaram (for short 'the Tribunal'). The former appeal arises out of M.O.P. No.430 of 2000 in which the petitioner sought compensation for the injuries he sustained in a road accident. The latter appeal arises out of M.O.P. No.458 of 2000 filed by respondent No.5 in the former appeal being the owner of the jeep, who sought a sum of Rs.60,000/- towards repairs of the Jeep which met in the same accident.

2. By the aforesaid common award, the Tribunal allowed the claim in M.O.P. No.430 of 2000, granting a compensation of Rs.60,000/- as against Rs.2,00,000/- claimed by the petitioner therein as compensation. The Tribunal dismissed the claim in M.O.P. No.458 of 2000 sought for by the owner of the jeep.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in M.O.P. No.430 of 2000 before the Tribunal.

4. The fact-situation occurring in the instant case is, that on 21-03-2000 at about 5.00 P.M., the petitioner along with his

family members were travelling in a Jeep bearing registration No.AP 7E 4021 from Neelavadi Yatra to Parvathipuram, and when they reached near Belagam Yettukana, a lorry bearing registration No.AP 5T 5199 driven by respondent No.1 in a rash and negligent manner coming from opposite direction, dashed their jeep, due to which, the petitioner sustained injuries. According to him, he was taken to Government Hospital, Parvathipuram and from there he was shifted to M.R. Government Hospital, Vizianagaram, where the hospital authorities refused his admission and he was, therefore, shifted to A.N. Beach Hospital, Visakhapatnam. Later, he also took treatment in Karshaka Maharshi Hospital, Parvathipuram. Therefore, he sought Rs.2,00,000/- as compensation against respondent Nos.1 to 3, who are driver, owner and insurer of the lorry, whereas respondent No.4 is the driver of the jeep and respondent No.5 is owner of the jeep.

5. Respondent No.1 filed written statement, whereas respondent No.2 adopted the same in M.O.P.No.430 of 2000. They required the petitioner to prove the rash and negligent driving attributed to respondent No.1 and other relevant facts. According to them, since the lorry was insured with respondent No.3 and that the policy was in force, respondent No.3 alone is liable to compensate the petitioner.

6. Respondent No.3 filed its written statement contesting the claim. It also required the petitioner to prove the material allegations, and also claimed that the claim made by the petitioner is beyond proportion and, therefore, sought to dismiss the claim.

7. Respondent No.4 filed his written statement, which was adopted by respondent No.5, contending that the accident had

occurred only due to the rash and negligent driving of respondent No.1. Even, the police registered case against respondent No.1, driver of the lorry vide Crime No.25 of 2000, and that he was possessing valid driving license at the relevant time, hence, sought to dismiss the claim.

8. Similar averments were made in M.O.P. No.458 of 2000 except to the extent that respondent No.5 in M.O.P. No.430 of 2000 is the petitioner and sought for damages. The respondents required him, who is owner of the jeep, to prove his entitlement for damages, besides other allegations levelled in the petition.

9. Based on the aforesaid pleadings, the Tribunal framed the following issues in both the cases.

"M.O.P. No.458 of 2000

1) Whether the accident occurred due to rash and negligent driving of the lorry bearing No.AP 5T 5199 by its driver, who is the first respondent?

2) Whether the petitioner is entitled for compensation from any of the respondents; If so to what extent?

3) To what relief? "

"M.O.P. No.430 of 2000

1) Whether the accident occurred due to rash and negligent driving of the lorry bearing No.AP 5T 5199 by its driver who is the first respondent; and by Jeep bearing No.AP 31T 8456 by its driver, who is the fourth respondent?

2) Whether the petitioner is entitled for compensation from any of the respondents; If so to what extent?

3) To what relief? "

10. Before the Tribunal, common evidence was let in both the petitions. On behalf of the petitioners in both the petitions, besides examining themselves as PWs.1 and 2, also examined the Medical Officer as PW.3 and B. Veeraju as PW.4, and marked Exs.A-1 to A-13. On behalf of respondents, none was examined, but copy of insurance policy was marked as Ex.B-1.

11. Since issue No.1 is common in both the petitions, the Tribunal has taken up issue No.1 together, and basing on the evidence of PW.1 and supported by Exs.A-1, A-4 and A-5, held the said issue in favour of the petitioner in O.P. No.430 of 2000.

12. On issue No.2 in O.P. No.430 of 2000, analysing the evidence on record, the Tribunal awarded Rs.15,000/- towards injuries sustained by the petitioner; Rs.25,000/- towards medical expenses; and accepting 15% partial permanent disability as per Ex.A-12 issued by the District Medical Board, Vizianagaram, a sum of Rs.15,000/- is awarded towards permanent disability; a sum of Rs.5,000/- is awarded towards loss of earnings and other incidental expenses. Aggrieved of the same, C.M.A. No.31 of 2004 is filed by the petitioner, contending that the Tribunal awarded a meager compensation, despite the fact that he sustained grievous injury and was treated as in-patient and was unable to move for quite some time to pursue his activities, and also challenging the finding of the Tribunal casting 25% contributory negligence on respondent Nos.4 and 5.

13. So far as M.O.P. No.458 of 2000 is concerned, the Tribunal, basing on the admission made by PW.4, a mechanic, on

Ex.A-11 that it is only an estimate but not the bill and for want of proof of payment of bill amounts towards repair charges, rejected the request of the respondent No.5 - petitioner, who is owner of the jeep. The same is also challenged in C.M.A. No.33 of 2004, stating that Ex.A-11 ought to have been considered as repairing charges incurred by the respondent No.5 - petitioner, and the Tribunal thus, went wrong in holding otherwise.

14. Now, the short question that arises for consideration in the former appeal is, whether the compensation awarded by the Tribunal is just and adequate?

15. It is true as contended by the learned counsel for the petitioner that contributory negligence is assessed at 25% so far as the driver of the jeep is concerned, but, however, making the apportionment fixing the liability appears to be incorrect. Concerning the amounts granted under various heads, so far as the amount of Rs.15,000/- is concerned towards injuries, the same is not disturbed. However, concerning 15% disability, the amount of Rs.15,000/- being granted by the Tribunal is not based on the formula that has to be adopted by taking into account the income, the percentage of disability and relevant multiplier. However, it is difficult to arrive at a definite finding on that aspect of the case at appellate stage. Therefore, towards disability as against 15%, a sum of Rs.25,000/- is granted.

16. The Tribunal has awarded Rs.5,000/- towards loss of temporary earnings and other incidental expenses. Though, it is not supported by any reasoning, still, the same is confirmed, as it is a fact finding authority. So far as the medical bills are

concerned, the Tribunal has awarded Rs.25,000/- as against Rs.51,345/- assigning the reason that the petitioner refused to get admission in the Government Hospital and left the Government Hospital against the medical advice. That cannot be a ground in view of the evidence of PW.3 and, therefore, the total sum of Rs.51,345/- is granted as against Rs.25,000/- granted by the Tribunal. Thus, the petitioner is totally entitled to a sum of Rs.96,345/-{Rs.15,000/- + 25,000/- + 5,000/- + 51,345/-}. Concerning the interest at 9% per annum awarded by the Tribunal, the same is not interfered with, since, the claim was adjudicated in 2003, and that too, in the absence of any indication about the same being deviated from the prevailing rate of interest at the relevant point of time. However, the interest on the enhanced amount shall be at the rate of 7.5% per annum from the date of petition till realization, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[1].

17. So far as the contributory negligence is concerned, though, the Tribunal mentioned about the same, no cogent reasons were assigned. Therefore, instead of apportioning the liability distinctly, to that extent, the observation of the Tribunal is modified as the evidence on record would show that the crime is registered against the driver of the lorry, who is respondent No.1 in M.O.P. No.430 of 2000. Therefore, the entire liability rests on only respondent No.1, even, as per the evidence on record. To that extent, that finding is interfered with, holding that the petitioner is entitled to claim the entire compensation from the respondent Nos.1 to 3, and accordingly, the award of the Tribunal to the extent

of fixing the liability at 25% on respondent Nos.4 and 5 is set aside. Accordingly, the appeal in CMA No.31 of 2004 is allowed in part.

18. Now, turning to CMA No.33 of 2004, the short point that arises for consideration is, whether the order under challenge is liable to be set aside? The finding of the Tribunal that basing on the evidence of PW.4 that Ex.A-11 is not a bill, but it is only an estimate and since there is no proof to show that the petitioner in M.O.P. No.458 of 2000 has really incurred expenditure shown therein, is correct, and accordingly, the appeal in CMA No.33 of 2004 is dismissed.

19. In the result, C.M.A. No.31 of 2004 is allowed in part, and the award and decree dated 26-09-2003 passed by the Tribunal in M.O.P. No.430 of 2000 is modified, enhancing the compensation to Rs.96,345/-(Rupees ninety six thousand three hundred and forty five only) from Rs.60,000/-, with interest at the rate of 9% on the amount of Rs.60,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.36,345/- from the date of petition till realization, with permission to withdraw the entire amount, holding that the respondent Nos.1 to 3 are jointly and severally liable to pay compensation, but dismissing the claim against respondent Nos.4 and 5. So far as C.M.A.No.33 of 2004 is concerned, there is no merit and, therefore, dismissed confirming the order of the Tribunal. There shall be no order as to costs.

20. As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

July 11, 2014.
Mgr

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[1]. 2013 ACJ 1403